

Public Agencies Cannot Recover Costs for Redacting Digital Police Body Camera Footage Under the Public Records Act

06.01.2020

Public agencies' costs of editing exempt material from electronic records before disclosure are not recoverable under the California Public Records Act ("PRA"). The California Supreme Court last week reversed a previous appellate ruling that held public agencies may recover those costs from a party seeking electronic records.

In *National Lawyers Guild v. City of Hayward*, City staff spent approximately 40 hours redacting medical and other exempt information from police body camera footage in response to the Guild's records requests. The City charged the Guild approximately \$3,000 as reimbursement under Government Code Section 6253.9, which allows agencies to charge for the "data compilation, extraction, or programming" of electronic records. The Guild paid some of the charges under protest and then sued for a refund, arguing that the City may only charge for direct costs of duplication, not the costs of redacting the video files.

The Supreme Court's ruling focused on competing definitions of the phrase "data extraction" and the specific actions taken by the City to produce the final version of the digital records. It agreed with the Guild that the context of Section 6253.9 suggests that data "extraction" is simply a technical process of retrieving responsive information in order to construct a new record, such as exporting responsive data from a large database into a spreadsheet. Beyond that technical process, City staff reviewed original digital files and used software to redact exempt audio segments. The Court ruled this deletion was substantively similar to other redactions for which costs are not recoverable, such as using an electronic tool to draw black boxes over exempt material contained in a document. The majority opinion - supported by seven of eight justices -- concluded that the term "data extraction" does not cover the process of redacting exempt material from otherwise disclosable electronic records. Thus, public agencies may not recover their costs for that process.

For more information on the *National Lawyers Guild v. City of Hayward* case or any other Public Records Act matter, please contact **Isra Shah** or any of the members of the Firm's **Public Law Department**.